



The Comptroller General  
of the United States

Washington, D.C. 20548

CH-11  
PL-11

## Decision

Matter of: Express Signs International

File: B-225738

Date: June 2, 1987

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### DIGEST

Although agencies generally should not require performance (and accompanying bid) bonds for other than construction contracts, bonding requirements are proper for nonconstruction contracts if needed to protect the government's interests.

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### DECISION

Express Signs International protests the requirement for bonds in Veterans Administration (VA) invitation for bids (IFB) No. 615-2-87. Express contends that the requirement, imposed by solicitation amendment, is unwarranted and, alternatively, that firms were not afforded enough time between issuance of the amendment and bid opening to secure the bonds.

We deny the protest.

The solicitation, issued on January 15, 1987, invited bids to provide and install all interior signs at the replacement VA Medical Center in Minneapolis, Minnesota, within 90 days after contract award. Bids were due on February 18. The VA issued an amendment to the IFB on January 28 to require a firm to furnish a bid bond with its bid, and the successful bidder to furnish a performance bond within 10 days after receiving a notice to proceed. (Bids have not yet been opened.)

Express protests that the bonding requirements are not appropriate under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.103 (1986). The regulation states that although agencies generally should not require performance

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bonds<sup>1/</sup> for other than construction contracts, bonds may be needed to protect the government's interest. The regulation gives four examples of such situations: where government property or funds are to be provided to the contractor for its use or as partial compensation; where the government wants assurance that the contractor's successor in interest is financially capable; where substantial progress payments are made before delivery begins; and where the contract is for dismantling, demolition, or removal of improvements.

Express notes that none of the situations mentioned in the regulation is involved here. The protester argues that the government's interests are adequately protected because, until final payment upon completion of the work, the contractor bears the entire risk for all contract costs; a preaward responsibility survey will be conducted to insure the awardee is capable of performing the contract work; and the government has the right to terminate the contract for default and the right to assess liquidated damages for late delivery.

As stated above, the FAR itself recognizes there may be circumstances not specifically mentioned where bonds are needed to protect the government's interest. We will not disturb a contracting officer's decision that performance bonds are needed in a nonconstruction situation if the decision is reasonable and made in good faith. See Cantu Services, Inc., B-208317, Nov. 2, 1982, 82-2 C.P.D. ¶ 401.

The VA states in its report on the protest that the primary reason for requiring performance bonds here is to insure the shortest possible delay in the event of contractor default. The contracting officer states:

"The time frame for performance of this project is critical to the opening of our Replacement Medical Center. The installation of signage is essential in directing all users of the new medical center to any location in a large and complex hospital. The inclusion of a Performance Bond further ensures the project's time frame being met."

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<sup>1/</sup> A bond is a written instrument executed by the bidder and a surety to assure the bidder's obligation to the government. A bid bond assures that the bidder will neither withdraw its bid nor fail to execute required documents within the period specified. A performance bond secures performance and fulfillment of the contractor's obligations under the contract.

We cannot conclude that the VA's decision to require a performance bond is unreasonable. Our Office has endorsed the imposition of performance bond requirements for contracts to perform critically needed services using some government equipment or on government property. See, e.g., Galaxy Custodial Services, Inc., et al., 64 Comp. Gen. 593 (1985), 85-1 C.P.D. ¶ 658; Renaissance Exchange, Inc., B-216049, Nov. 14, 1984, 84-2 C.P.D. ¶ 534; Cantu Services, Inc., B-208317, supra. The contract work is intertwined with the construction of the Medical Center; obviously is critical to the opening of the Center; and will involve work by the contractor--installing the signs--on government property. The fact that a bond requirement may make it expensive or difficult for some firms to compete does not warrant our objection to it if it legitimately is needed to secure fulfillment of the contractor's obligations. See Rampart Services, Inc., B-221054.2, Feb. 14, 1986, 86-1 C.P.D. ¶ 164.

Moreover, we specifically have rejected argument's like Express' that the same government interest a performance bond is designed to protect already is adequately protected by other elements of the procurement process and by contract administration. In Rampart Services, Inc., B-221054.2, supra, we explained that the preaward responsibility survey is only an evaluation of a prospective contractor's capability to perform a proposal contract, and does not offer an agency any legal protection after award is made. Similarly, the default clause provides only a method for the government to terminate a contract if the contractor fails to perform, and makes the contractor liable for the excess costs of reprocurement, and a provision for payment deductions protects the government's interest during performance only against losses and expenses incidental to performance; neither guards against the substantial and serious failure of a contractor to perform essential services.

Accordingly, we will not object to the requirement for a performance bond. Also, since bid bonds may be required in nonconstruction contracts where performance bonds are required, the bid bond requirement is proper as well. FAR, 48 C.F.R. § 28.101-1(a).

Express further protests that even if the bond requirements are warranted, the firm was not afforded enough time between receipt of the solicitation amendment imposing them and the date bids were due--February 18--particularly since Express, located in California, understands that it must secure bonds from a surety licensed in Minnesota, where the Medical Center is located, and has encountered difficulty in that regard. We note, however, that bid opening has been delayed

for several months, during which Express certainly has had time to resolve its problems. Moreover, the mechanics of securing bonds that properly are being required is a matter for the prospective bidders and sureties, not our Office.

The protest is denied.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel